

Round One: Gritter Confidential Facts

Gritter is outraged at its treatment by the State in this matter. The transaction between Gritter and McCabe was carefully drafted to ensure that liability would not pass to Gritter. The State is clearly overreaching, consistent with regulators' usual "high-handed" approach to dealing with industry. Further, it is clear that the State is selectively enforcing against Gritter by not pursuing Drabbino. This is egregious, especially considering that illegal disposal took place on the Drabbino property. As to Gritter's defense, you believe the 9th Circuit would agree that Gritter should not be considered a corporate successor. However, you are not interested in being forced into litigation. Your client Bishlawi will not make a good witness. He is also under investigation for SEC violations. Although you do not believe that is relevant to the case at hand, you are not interested in engaging in court battles with the government.

Gritter feels very strongly that the State should pursue Drabbino independently. It is patently unfair for the State to ignore Drabbino and to tell you to pursue Drabbino in contribution. Furthermore, Gritter is contemplating future operations in the vicinity and does not want the community to view it as the evil polluter. Therefore it is imperative for the State to be pursuing Drabbino too.

The State is clearly worried that its case against Drabbino is weak. You believe that Drabbino cannot maintain that it took "reasonable steps" with respect to the contamination on the property and is not, therefore, a bona fide prospective purchaser. You want to bolster the State's confidence in the case against Drabbino, but at the same time you don't want to sound eager to pursue the claim yourself.

You want to settle this case. You would prefer to agree to perform portions of the cleanup rather than pay the State to conduct the cleanup because you can perform the remedy for less money. However, you are only willing to enter into an agreement if the State agrees to pursue Drabbino for a significant portion of the cleanup. Under no circumstances do you want to agree to a settlement that would constitute giving the State a blank check. Therefore, you are interested in negotiating an agreement that provides Gritter with a cost cap or a commitment from the State to share costs. You have been budgeted \$20 million to make this problem "go away." You anticipate that the Gritter top brass will be reluctant and unhappy to grant any significant additional funding. Finally, you think that the State should assist you in putting Gritter in a positive light with the community.

In this round of negotiations, you want to resolve how much money your client is going to have to spend at this site, whether or not the State will agree to pursue Drabbino, and if the State will assist you in a public relations campaign.